



March 16, 2021

SUBMITTED VIA USFWS PORTAL

ATTN: FOIA OFFICER
United States Fish & Wildlife Service
Interior Region 2
Ms. McClurkin
5275 Leesburg Pike
MS: IRTM
Falls Church, VA 22041

***Re: Freedom of Information Act Request Regarding the Transfer of Authority Over
Clean Water Act Section 404 Permitting in Florida***

Dear FOIA Officer:

This is a request for information on behalf of Earthjustice, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the United States Fish and Wildlife Service regulations, 43 C.F.R. §§ 2.3-2.70. This request seeks United States Fish and Wildlife Service ("USFWS") records pertaining to the transfer of authority over Clean Water Act Section 404 permitting in Florida, 33 U.S.C. § 1344.

I. Records Requested

We request all of the following records in the possession, custody, or control of USFWS that were drafted, reviewed, stored, or received.

- (1) All communication or correspondence between USFWS and Florida's Department of Environmental Protection ("FDEP") between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida. This request includes, for example, records relating to the technical assistance process and Section 7 consultation for assumption.
- (2) All communication or correspondence between USFWS and the United States Army Corps of Engineers between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida.
- (3) All communication or correspondence between USFWS and the U.S. Environmental Protection Agency ("EPA") between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida. This request includes, for example, records relating to the technical assistance process and Section 7 consultation for assumption.

FLORIDA OFFICES

111 SOUTH MARTIN LUTHER KING JR. BLVD.
TALLAHASSEE, FL 32301
T: 850.681.0031

4500 BISCAYNE BLVD., SUITE 201
MIAMI, FL 33137
T: 305.440.5232

- (4) All communication or correspondence between USFWS and the National Marine Fisheries Service (“NMFS”) between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida. This request includes, for example, records relating to the technical assistance process and Section 7 consultation for assumption.
- (5) All internal records, communications, or correspondence between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida. This request includes, for example, records relating to the technical assistance process and Section 7 consultation for assumption.

For purposes of this request, the term “records” is used to mean anything denoted by that word or its singular form in the text of FOIA. In particular, the term includes, but is not limited to documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored), letters, emails, facsimiles, memoranda, correspondence, notes, databases, maps, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained.

We ask that you disclose this information as it becomes available to you without waiting until all of the communications and records have been assembled for the time period requested. We request electronic copies of the records whenever possible. We also request that you notify us as soon as possible if any fees assessed are anticipated to exceed \$300.

II. Claims of Exemption from Disclosure

If you regard any documents as exempt from required disclosure under the Act, please exercise your discretion to disclose them nevertheless. *See* Memorandum from the Attorney General to Heads of Executive Departments and Agencies (Mar. 19, 2009) (“[A]n agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.”), *available at* <http://www.justice.gov/ag/foia-memo-march2009.pdf>.

Should you determine that any records may be withheld under FOIA’s narrow exemptions, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency’s justification for withholding it. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure. Finally, if a document does not exist, please indicate that in your written response.

As provided by 5 U.S.C. § 552(a)(6)(A), we look forward to a reply within 20 business days. Please send the requested records by email to ruhland@earthjustice.org or, for records not available electronically, by regular mail to Rachael Uhland, Earthjustice, 111 S. Martin Luther King Jr. Blvd. Tallahassee, Florida 32301. If you find this request is unclear in any way, please do not hesitate to contact me by phone at (850) 681-0031.

Thank you for your time and assistance. We look forward to your prompt reply.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rachael Uhland".

Rachael Uhland
Research & Policy Analyst
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, FL 32301
(850) 681-0031
ruhland@earthjustice.org